



**Planning Staff Report to
Board of Zoning Appeals
October 10, 2023**
for the October 12, 2023 Public Hearing

Docket Number: A 23-747
Appellant: Matt McPheely
Property Owner: 915 + Main, LLC
Property Location: 911, 915, 917, 919 Rutherford Road
Tax Map Number: 018302-01-00903; 018302-01-00904; 018302-01-00905;
018302-01-00901
Acreage: 0.95
Zoning: RH-C, Residential House District
Proposal: **APPEAL OF ADMINISTRATOR'S DECISION**

Applicable Sections of the City of Greenville Code of Ordinances:

Sec. 19-3.2. *Permitted Use Table*
Sec. 19-3.3.1. *Use Definition Interpretation*
Sec. 19-3.3.2. *Residential Uses*
Sec. 19-6.1. *Authority*
Sec. 19-6.1.4. *Board of Zoning Appeals*
Sec. 19-6.2.1. *Common Review Procedures*
Sec. 19-6.2.15. *Quasi-Judicial Review*

Staff Analysis:

Summary

On September 15, 2023, the Administrator of the City of Greenville Development Code (GDC) issued a formal letter of interpretation verifying that the intended use of the structures on the subject properties was most consistent with the "General group living" specific use per Section 19-3.2.2, Use Table, and is not a permitted in the RH-C, Residential House District. This letter was sent by email and Certified US Mail on September 15th, and was confirmed received on September 15th and signed for on September 18th respectively.

On September 19, 2023, a written notice of appeal of the Administrators Interpretation was filed by Appellant Mr. Matt McPheely.

Background

On July 26, 2021, a Building Permit application was submitted for a 6 bedroom, 6.5 bathroom structure requested as a single-family detached residence under Permit 21-2823 for 911 Rutherford Road. This application initially prompted discussion amongst City Planning Staff regarding configuration of the structure, including individual full bathrooms for each rooming unit. After confirming that the use of

these structures could only be used as single-family residences, this permit, as well as three other permits (22-307 for 915 Rutherford Road; 22-308 for 917 Rutherford Road; 22-309 for 919 Rutherford Road), were approved with conditions by Planning Staff. Permits were issued by the Building Department on July 6 and June 10, 2022 respectively.

After online and social media posts identified the property, called “Union House”, as a co-living community, adjacent neighbors alerted the City that this use was inconsistent with single family living. The City requested by letter dated August 19, 2022 that the Appellant provide further assurances that the use of the property would be single family. An Affidavit of Compliance stating intent to comply with the Land Management Ordinance (LMO) was signed and notarized on August 22, 2022 by the Appellant.

Over the following year, Appellant nevertheless continued to market the original co-living arrangement to potential investors and the public. Appellant installed fire-sprinkler systems that would be required for congregate living arrangements at his own discretion. As construction progressed, neighbors and the City became increasingly anxious as to the Appellant’s intent to comply with the Land Management Ordinance and his own sworn promise. Revised plans to add further parking were denied by Planning Staff because they were non-complaint with the LMO. All multi-family or Group Living uses under the new GDC require one parking space per room or dwelling unit. This development provides 8 parking spaces for 24 rooms.

Planning Staff did not have any discussion with the Appellant during the GDC enactment process – neither getting clarification on how his land use was being handled in the new ordinance, nor requesting appropriate zoning for the intended use during various stages of zoning map reviews.

The City of Greenville filed a Complaint with Circuit Court on June 19, 2023 to prevent Appellant from leasing the units to unsuspecting tenants prior to application for or receipt of a CO. As the Complaint coincided with the approval of the Greenville Development Code effective July 15, 2023, it addressed the use classification under both ordinances.

Appellant’s sworn affidavit dated August 22, 2022 stated that the residential dwellings will be “used only for single-family household living” and would not be used as “a boardinghouse, group living, communal living or any other use not permitted within the R-6, Single Family residential zoning district.” The GDC does not use or define the phrase “single family living.” There is no dispute that his currently intended use is not a single family use as defined by the LMO. But despite the affidavit and the reliance placed upon it by the City and the adjacent neighborhood, Appellant posits that his intended use complies with the GDC, and should therefore be permitted. The application for a zoning determination was part of the exhaustion of Appellant’s administrative remedies in an agreed upon attempt to avoid further litigation.

On August 30, 2023, the Appellant requested a formal interpretation by the Administrator through a zoning verification letter for each of the four properties at 911, 915, 917, and 919 Rutherford Road. An interpretation letter was drafted and sent to the Appellant on September 15, 2023.

On September 19, 2023, the Appellant submitted an Application to Appeal the Administrators Interpretation, and this application was considered complete and sufficient by Planning Staff. The Appellant claims the properties will operate in a manner consistent with “Household-unit living”, as opposed to the Administrators interpretation stating that the use is most consistent with a “General group living” use in the Greenville Development Code.

Staff Findings:

Staff offers the following findings:

- Staff finds that plans submitted with Building Permits 21-2823, 22-307, 22-308, and 22-309 for structures proposed for 911, 915, 917, and 919 Rutherford Road show four bedrooms for each unit, and two other rooms listed as “office” that are readily usable as bedrooms; and
- Staff finds that buildings have been upfit with residential sprinkler systems required for congregate living uses, but not required for single-family dwelling units per International Residential Code (Building Code); and
- Staff finds that kitchen and other common areas will be openly accessible by all occupants; and
- Staff finds that, the Appellant intends to rent structures on the subject properties by the bedroom “suite”, including a private bedroom and bathroom, according to marketing and social media materials posted by the Appellant; and
- Staff finds that the arrangement of six renting adults will likely result in parking demands of one car per resident, or six cars per structure; and
- Staff finds that the proposed use as depicted in plans and described by the Appellant via social media/marketing does not readily fit within a specific use category in the Greenville Development Code; and
- Staff finds that the Greenville Development Code provides a method for determining a specific use category by the Administrator, outlined in Section 19-3.3.1. Use Definition Determination; and
- Staff finds that the Appellant, on August 30, 2023, requested a comprehensive zoning verification letter for each of the four properties at 911, 915, 917, and 919 Rutherford Road to verify compliance between the development, in process, and the Greenville Development Code; and
- Staff finds a zoning verification letter was completed and sent to the Appellant on September 15, 2023, identifying the specific use as “General group living” using the criteria in Greenville Development Code Section 19-3.3.1; and
- Staff finds that this interpretation letter and determination of use is important to have rectified prior to issuance of any Certificate of Occupancy and occupation of the structures by residents; and
- Staff finds that the Appellant submitted an Application for Appeal of the Administrators Interpretation on September 19, 2023; and
- Staff finds that throughout permitting and construction of the structures at the subject properties, that the Appellant was consistently made aware of conflicts with the Land Management Ordinance, that changes to code language enacted with the new Greenville Development Code are consistent with the cited Land Management Ordinance issues, and that no significant requests for changes or clarification on the Greenville Development Code were made by the Appellant prior to adoption of the Code.
- Staff finds this interpretation is consistent the GVL 2040 Comprehensive Plan.

Staff Comments

Building Codes Comments

In June of 2022, I emailed Mr. McPheely to let him know that the way he was marketing the houses at 911-919 Rutherford Road would change the building code classification of these structures from a single-family dwelling under the International Residential Code to a Congregate Living Facility under

the Building Code. His advertisements noted room rentals with shared common space. The code defines congregate living as, "A building or part thereof that contains sleeping units where residents share bathroom or kitchen facilities, or both." Chapter 2, 2018 IBC (SC Building Code). I also let him know that under the building classification, a residential sprinkler system would be required. I also let him know that we would not be able to allow congregate living with out a sprinkler system even if the zoning code changed to allow for this type of use and that it would be more expensive to add the sprinkler systems after the homes were complete. He agreed to the sprinkler system because he wanted the option to utilize the congregate living concept. – Building Codes Administrator Buddy Skinner

City Engineer Comments

No comments.

Civil Engineer Comments

No comments.

Environmental Engineer Comments

No comments.

Traffic Engineer Comments

No comments.

Fire Department Comments

No comments.

INSTRUCTIONS

1. The application and fee, **made payable to the City of Greenville**, must be received by the planning and development office no later than 4:00 pm within ten (10) business days of the date of the written decision or interpretation.
2. You must attach a statement addressing the reasons that you believe the administrator erred in his determination or interpretation of the City Code regarding the subject property.
3. You must attach any other information relevant to the disputed item, and if applicable, a scaled drawing of the property that reflects, at a minimum, the following:
 - Property lines, existing buildings, and other relevant site improvements;
 - The nature (and dimensions) of the disputed item;
 - Existing buildings and other relevant site improvements on adjacent properties; and
 - Topographic, natural features, etc.
4. You must attach the required application fee:
 - For appeal to the Board of Zoning Appeals: \$250.00 for persons having rights in contract in the subject land; \$50.00 for those adjacent to the subject land.
 - For appeal to the Design Review Board: \$150.00 for signs and single-family residential; \$300.00 for all other.
 - For appeal to the Planning Commission: \$250.00.
5. The administrator will review the application for “sufficiency” pursuant to **section 19-2.2.6, Determination of Sufficiency**, prior to placing the application on a public hearing agenda. If the application is determined to be “insufficient”, the administrator will contact the applicant to request that the applicant resolve the deficiencies. **You are encouraged to schedule an application conference with a planner, who will review your application for “sufficiency” at the time it is submitted. Call (864) 467-4476 to schedule an appointment.**
6. You must post the subject property at least 15 days prior to the scheduled hearing date.
 - The appellant acknowledges receiving ____ “Public Hearing” sign(s) and Posting Instructions from the Planning Office.

-
7. The appellant and property owner affirm that all information submitted with this application; including any/all supplemental information is true and correct to the best of their knowledge and they have provided full disclosure of the relevant facts.

In addition, the appellant and property owner affirm that the tract or parcel of land subject of this application is, or is not, restricted by any recorded covenant that is contrary to, conflicts with, or prohibits, the requested activity.

If the planning office has actual notice that a restrictive covenant is contrary to, conflicts with, or prohibits the requested activity, the office must not issue the permit unless the office receives confirmation from the applicant that the restrictive covenant has been released by action of the appropriate authority, property holders, or by court order.

To that end, the appellant hereby affirms that the tract or parcel of land subject of the attached application **IS** ____ or **IS NOT** X restricted by any recorded covenant that is contrary to, conflicts with, or prohibits the requested activity.

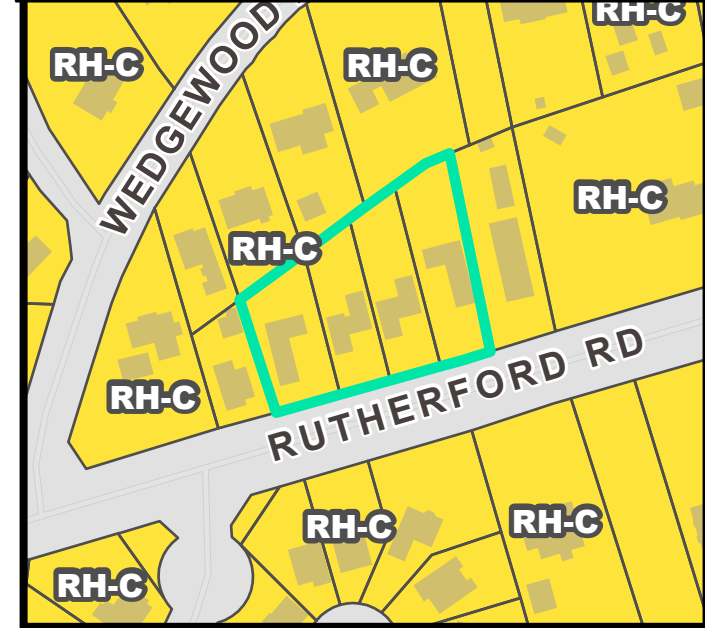
APPELLANT:  _____ DATE: 9/19/23

PROPERTY OWNER:  _____ DATE: 9/19/23

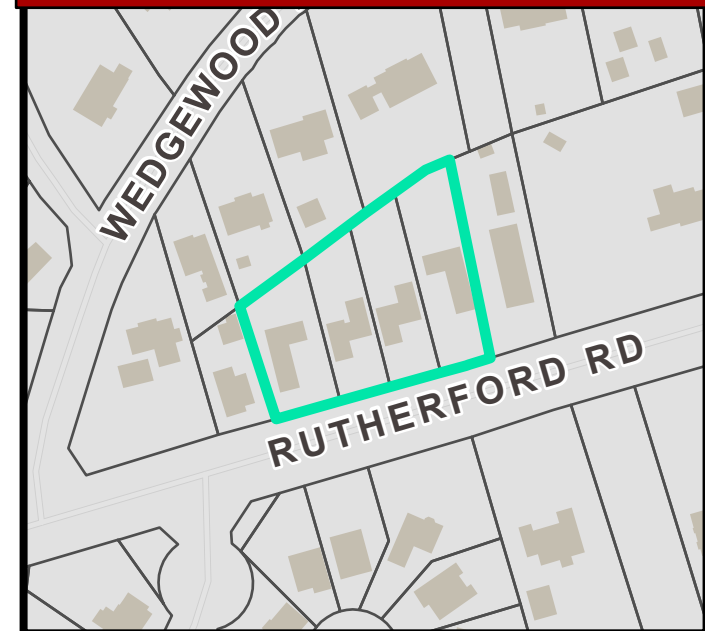
AERIAL VIEW



CURRENT ZONING



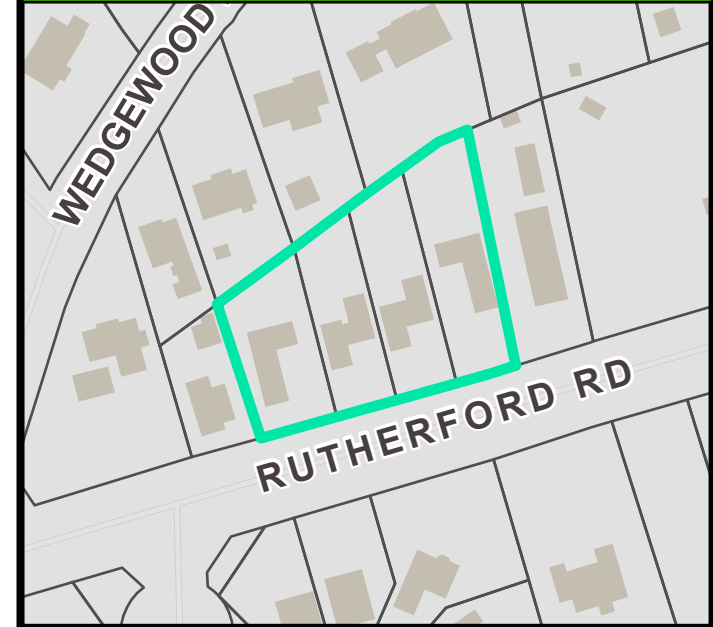
FUTURE LAND USE



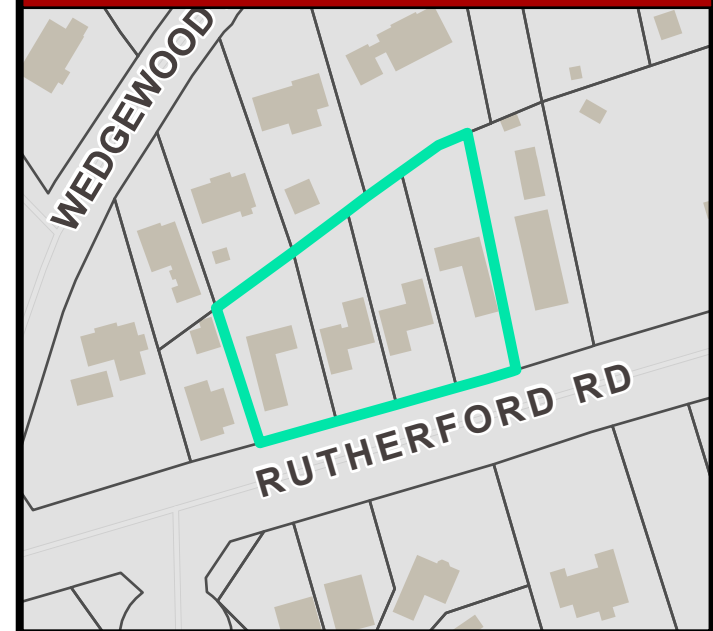
NATURAL / ENVIRONMENTAL FEATURES



SPECIAL EMPHASIS NEIGHBORHOODS



PRESERVATION OVERLAYS



BZA Application

Appeal of Administrative Decision

915 + Main, LLC (“Applicant”)
306 Randall Street
Greenville, SC 29609

Executive Summary

- The project entails four parcels. Each parcel was permitted to build one detached dwelling unit of roughly 3200-ft². Each structure is substantially complete, was built to code, and has passed all inspections. (the “Project”)
 - On September 15, 2023, the City of Greenville issued a Comprehensive Zoning Verification Letter (“CZVL”) determining that the Project was inconsistent with the City’s applicable zoning laws. This submission is an appeal of that determination.
 - The determination by the City of Greenville’s staff is based on a conclusion that the intended use for this project “is similar to a boarding house use, and therefore most closely aligns with ‘General Group Living’ use in the Greenville Development Code.”
 - In addition to the CZVL, the City has also attempted to stop the project by suing the Applicant under a version of the Code that has been superseded by the current, applicable law.
 - The City’s determination is flawed and contrary to applicable law.
 - Following the applicable law and an appropriate analysis, the Project is considered “Household Living” and permissible within RH-C.
 - The City analysis, as set forth in the CZVL, fails to follow the clear guidelines and rules set forth in the Code.
 - Further, under the City’s interpretation, the City of Greenville would effectively be outlawing all homes with roommates and enacting the most restrictive housing policy in the country. As detailed herein, there are numerous active properties throughout the City of Greenville that are used in the manner consistent with the Applicant’s intended use—and for which the City has not attempted to hinder or prohibit such use.
 - The City’s adverse determination represents an incorrect—as well as arbitrary and capricious— application of the Code, and should be rejected. The Project should be deemed Household Living under the applicable rules of the Code.
-

1. **We are appealing an adverse zoning decision which states our intended use for this project is “most consistent with those expected from a general group living boarding house use”.**
 - a. Our intended use is, and always has been, to execute leases with a family or one or more individuals, with terms of one year (or more), but not less than 30-days.
 - b. We were permitted to build four detached dwelling units, each ranging from 3,100-3,300 ft². We have complied, and each structure is substantially complete, built to code, and passed all inspections.
 - c. Each of the four dwelling units has up to six rooms that can be used as bedrooms, and each of these rooms has its own bathroom. Each dwelling unit has one kitchen, one living room, one front door, and one back door.. Each person would have common access to, and common use of all living, kitchen, eating areas, entrances, and exits within the dwelling unit. There are no private entrances or exits.
 - d. *See Attachment A (“City’s Determination Letter”) and Attachment B (“Determination Criteria & Responses”) for additional context.*
2. **The city has attempted to delay or stop through multiple efforts and has initiated a lawsuit against the Applicant.**
 - a. The City required I (Matt McPheely) sign an affidavit on August 22, 2022 stating *“I acknowledge that the subject properties will not be used as a boardinghouse, group living, communal living, or any other use not permitted within the R-6, Single-family residential zoning district,”* and threatened stop-work orders if I did not comply. *See Attachment C (“Affidavit”).*
 - b. On June 30, 2022, the City threatened stop-work orders if we did not install residential sprinkler systems. This added ~\$67,000 to the total project cost. The City has now used the presence of sprinklers as “proof” that Group Living was intended from the start.
 - c. On June 19, 2023, approximately two weeks before the scheduled completion of construction, the City filed a lawsuit against the Applicant and Matt McPheely (its principal sponsor) in an attempt to stop this project. However, they sued under the version of the Code (LMO) that is no longer in effect and has been superseded. *See Attachment D (Legal Summons) and Attachment E (“Answer & Counterclaim”).*
3. **Had the administrator followed the proper analytical procedure under the Code, the Project would be considered “Household Living” and permissible within RH-C.**
 - a. GDC 3.3.2 governs Residential Uses, and provides for two different categories: Household Living and Group Living.
 - b. All parties agree and there is no dispute that the Project’s intended use is a Residential Use.
 - c. Under the current zoning ordinance, if the use of a property qualifies as “household living,” by definition, it is not “group living.” (*See Attachment F, “Definitions”).*

- d. **Therefore, for this use to be deemed Group Living, it must first fail to qualify as Household Living under the applicable standard.**
- e. As set forth in Section 3.3.2(A), Household Living is defined as:
“Residential occupancy of a dwelling unit by a household. A household is considered one or more persons living together in a dwelling unit, with common access to, and common use of, all living, kitchen, and eating areas within the dwelling unit. Tenancy is typically arranged for 30 days or more.”
- f. The first requirement is that a household must consist of “one or more persons living together...” Note that it does not say “one or more *related persons*” or “*no more than x persons*.” It simply requires one or more people to be living together (the previous code called this a “housekeeping unit”).
- g. “...in a dwelling unit...” These structures meet each criteria of a *dwelling unit* and were permitted as such. They each contain one living and one cooking facility, as well as multiple sleeping and sanitation facilities. Each dwelling unit has one main entrance/exit (front door) and one secondary entrance/exit (back door). And since there is one dwelling unit on each lot, it also meets the criteria for “Single Unit Living.”
- h. “...with common access to, and common use of all living, kitchen, and eating areas within the dwelling unit.” Note that it does not say “common access and use of all bedrooms.” Our intended use explicitly provides common access to and use of all living areas, kitchen, and eating areas within each unit. Bedroom access will also be provided on an as-needed basis to each resident as well as the landlord, and no additional locks will be provided for bedroom doors.
- i. **The Project fully satisfies the stated criteria for Household Living as set forth in the Code. Hence, the Project must be designated as Household Living.**
- j. There is nothing about the Project’s structure or intended use that fails or is inconsistent with the definition of Household Living as set forth in Section 3.3.2(A).
- k. Despite this clear result, the City appears to construe the project to be Group Living for some reason that is unclear and inconsistent with the Code. For the City to treat the Project in such a manner, it must change the Code in a manner that would support such a conclusion.

4. The City’s approach to the analysis is flawed and contrary to law.

- a. GDC 3.3.2 governs Residential Uses, and provides for two different categories: Household Living and Group Living.
- b. As described in greater detail in Section 3 above, the mechanics of the Code first require the City to confirm whether the Project first meets the definition of Household Living, and only upon failing to do so, does the Project revert to a Group Living status.
- c. But here, the City fails to follow the simple process set forth in GDC 3.3.2. Had they done so, the result would be as set forth in Section 3 above.
- d. Instead, in this situation, the City has manufactured a nine factor analysis under GDC 3.3.2(C). But, that section is completely irrelevant to the current analysis.

- e. The Code is a tool used to categorize uses and understand those uses within the greater framework of applicable zoning rules. It lists multiple broad uses: Residential (3.3.2), Public and Institutional Uses (3.3.3), Commercial Uses (3.3.4), and Industrial Uses (3.3.5). And within each broad use, it provides for and defines various Use Categories. Residential Uses are broken into two Use Categories: Household Living and Group Living. Further, within each Use Category it provides for Specific Uses. Those Specific Uses for Household Living are Single Unit Living, Multi-Unit Living, and Manufactured Home Park (3.3.2(A))
- f. However, it is possible that an intended use is not listed or does not fit one of categories. In such a situation, the Code provides a mechanism through Section 3.3.1(B) (“**[w]hen a proposed use is not listed**”) and 3.3.1(C) for the City to analyze a project and assign it to a category for purposes of regulating its use under the applicable zoning rules. Specifically, Section 3.3.1(C) provides nine (9) criteria for the City to engage in such an analysis.
- g. In the current situation, the City’s CZVL launches into this nine factor analysis and then jumps to the conclusion that it deems the proposed use to be Group Living. But, this is completely inconsistent with the Code.
- h. Instead of first analyzing the definitions set forth in Section 3.3.2, the City’s analysis applies Sections 3.3.1(B) and (C) without any justification or explanation for treating the Project as a “not listed” use. The analysis provided by the City and set forth in the CZVL fails to follow the process and rules set forth in the Code, and moreover, fails to provide any support for any deviation from the basic rules set forth in the Code. Had the City followed the applicable law, the analysis would be as set forth in Section 3 above.

5. Additionally, this project does not meet any commonly accepted definition or historical precedent of a “boarding house.”

- a. Definitions of Group Living examples are not provided in the GDC. The City has relied on a definition from the LMO, which is no longer in effect.
- b. The commonality of each example listed is the addition of a commercial/service layer to a residential use. Each is a situation in which residents are provided with meals and/or other services/treatments, and are therefore no longer living independently.
- c. For a boarding house specifically, we can look to widely accepted definitions and historical examples to get a clearer picture. Here are definitions from various sources:
 - i. [Merriam-Webster](#): “A lodging house at which meals are provided.”
 - ii. [Cambridge Dictionary](#): “a private house where you can pay to stay and receive meals”
 - iii. [Dictionary.com](#): “a house at which board or board and lodging may be obtained for payment”
 - iv. The best evidence of all lies in the actual name. The word “board” itself, as it is used in terms such as *room & board* and *boarding house*, means “to provide with regular meals and often also lodging usually for compensation.” ([Merriam-Webster](#))

- d. Nothing associated with the Project or its intended uses include the provision of meals, nor additional services, treatment, or oversight, for residents in these homes.

6. If the administrator's interpretation of the GDC were correct, the city would be outlawing most forms of tenancies

- a. If independent persons who desire to *"live together in a dwelling unit with common access to, and common use of all living, kitchen, and eating areas within the dwelling unit"* are no longer allowed to do so because the City has prioritized unwritten rules and the avoidance of speculative nuisances, Greenville will have effectively made roommates and large families illegal.
- b. There are thousands of homes in Household Living zoning districts currently utilizing properties in such a manner. *See Attachment G ("Nearby Household Living Examples")* The City's idiosyncratic application of these rules would need to be applied equally to these properties. As is clear from the record, it is not doing so, and instead has uniquely singled out this Project in an arbitrary and capricious manner for reasons that are unclear.

Conclusion

The City's determination is based on speculation rather than what is written in the code.

- Our homes were built exactly to code (both old and current) as permitted by the City.
- Our intended use satisfies the definition of Household Living under applicable laws. In doing so, it obviates and precludes any shift to then deem the project to be Group Living.
- Even more, the Project as proposed clearly does not meet the definition of Group Living by the standards of the GDC, nor does it meet the definition of a boarding house by any common definition or historical precedent.
- The Project does not provide meals, or any other commercial or service layer, to any of the residents within these homes.
- Each household will consist of persons living together as a housekeeping unit, within structures that meet all stated code requirements.

Based on the evidence presented above, we ask that the Board of Zoning Appeals votes to find this project's intended use to be consistent with those of the Household Living use category.

Attachment A

City's Determination Letter



9/15/2023

ATTN: Matt McPheely
915 + Main, LLC
306 Randall Street
Greenville, SC 29609

Re: Location:	911 Rutherford Road	915 Rutherford Road	917 Rutherford Road	919 Rutherford Road
Tax Map #:	018302-01-00903	018302-01-00904	018302-01-00905	018302-01-00901
ZVL#:	23-3439	23-3440	23-3441	23-3442

This is a Comprehensive Zoning Verification Letter provided in response to Requests from the Applicant submitted on August 30, 2023. Submitted along with each of the Requests was a Submittal Package including Application for a Single-Family Site Plan Permit, dated January 25, 2022, for each above referenced parcel. Each Application contained the following "Brief Description of the Proposed Work":

A single family residence with associated driveway and walkways will be constructed. The residence will utilize the existing shared driveway already constructed. Erosion control methods including silt fence, coir logs, etc. will be utilized to prevent sediment from leaving the construction site. All disturbed areas of the site will be stabilized with seed as described in the attached drawing set.

The requested permits were approved under the City's former Land Management Ordinance (LMO) by which the property in questions was zoned R-6. The units were subsequently built but are not yet occupied.

No supplemental indication of the proposed use was provided by the Applicant on August 30. Staff has therefore relied on other publicly available material on the proposed use as described below. Based on the same material discovered by Staff during construction, Staff previously advised Applicant that the described use was not permitted under the R-6 zoning classification of the LMO. In response, Applicant provided the Affidavit attached as Exhibit A on August 22, 2022 stating that the properties "will not be used as a boardinghouse, group living, communal living, or any other use not permitted within the R-6, Single-family residential zoning district." Since it is undisputed that the more fully described use is not permitted under the R-6 zoning classification of the LMO, the determination below addresses whether that use would be permitted under the RH-C zoning classification of the newly enacted Greenville Development Code.

Zoning designation: RH-C, House C district (Greenville Development Code)

District Purpose: A walkable neighborhood environment intended to accommodate a variety of low-intensity housing options including single-family homes and accessory units, supporting and within walking distance of neighborhood-serving retail, food and service uses.

A complete list of permitted uses can be found in the *Use Table* in Section 19-3.2.2 of the Greenville Development Code, located online at

https://library.municode.com/sc/greenville/codes/code_of_ordinances?nodeId=COOR_CH19DECO.

Administrator's Statement of Interpretation:

Insofar as a detailed description of the Applicant's intended use of subject properties at 911, 915, 917, and 919 Rutherford Road has not been provided with the zoning verification letter request, the Administrator's interpretation is based on information as described in marketing and online advertisement and descriptions of the project, "Union House." (Ex. B, Union House Website Excerpts).¹ ² Upon review of these materials, such described operation and use of subject properties is most consistent with the "Group Living Use Category" and specific use of "General Group Living." This interpretation is being made pursuant to Greenville Development Code (GDC) Section 19-3.3.1. Use Definition Interpretation and using criteria in GDC Section 19-3.3.1.C. provided below in bold, outlined with Administrator's commentary in italics:

When determining whether a proposed use is similar to an already listed use, the Administrator will consider the following criteria:

1. Actual or projected characteristics of the use.

Administrator's interpretation: *Individual rental of 5-6 bedrooms in each structure is similar to a boarding house use, and therefore most closely aligns with the "General Group Living" use in the Greenville Development Code.*

- *Intent to rent structures on the subject properties by the bedroom.*
- *Each structure includes either 5 or 6 bedrooms with private bathrooms.*
- *Kitchen and other common areas will be openly accessible by all occupants.*
- *Buildings have been upfit with residential sprinkler systems required for congregate living uses, but not required for single-family dwelling units per International Residential Code (Building Code).*
- *"Typical examples [of Group Living Uses] include "boarding house, dormitory, fraternity or sorority house, monastery or convent, single-room-occupancy (SRO) housing," per GDC Section 19-3.3.2.B.1.*
- *"Boardinghouse", under the Land Management Ordinance (LMO), was defined as "a building other than a use classified as "visitor accommodations" where, for compensation and by prearrangement for definite periods, lodging or lodging and meals are provided for three or more persons."*
- *A Boardinghouse was not allowed in an R-6 Zoning District*
- *Boarding house is not defined in the GDC, so Staff relies on the commonly accepted definition of a boarding house in the LMO for guidance.*
- *Staff finds the more fully described use to most closely resemble a boarding house.*

2. Amount and nature of any nuisances generated on the premises.

Administrator's interpretation: *In excess of that typically expected on a single-family residential property, vehicles at average of one per bedroom would result in noise and adverse affects more consistent with group living.*

- *Each bedroom can be rented individually.*
- *Each structure has between 5 – 6 bedrooms with private bathrooms.*
- *Each bedroom will be rented by at least one paying adult.*
- *Generally, one vehicle is anticipated for each renting adult.*
- *Nuisance of up to 6 vehicles (21 vehicles between all four structures, assuming only one driving adult per bedroom) with frequent vehicle starting, idling, music, car doors closing, and headlights directed towards adjacent properties on entry, exiting, or parking on site.*
- *No single responsible occupant for activity occurring on the premises.*

3. Type, size, nature and arrangement of buildings and structures.

¹ In a podcast, the Applicant explains the Union House model as one in which "each three thousand square foot home that can be rented out by the bedroom..." for which he anticipates charging rent in the amount of \$800-\$1100 per month. Matt McPheely: The Most Creative Real Estate Investor and Developer We Know, Real Estate Unstuck Podcast (Sept. 27, 2022) (downloaded using iTunes).

² In the tweet pinned to the top of his Twitter profile, Applicant describes Union House as "coliving houses." Matt McPheely, @mattmcpheely, Twitter (Sept. 27, 2022, 12:02 PM), <https://twitter.com/mattmcpheely/status/1574791687263735815> (last visited Jun. 19, 2023).

Administrator's interpretation: Structures are arranged in a "suite" style and are outfitted with sprinkler systems most consistent with group living uses.

- Each structure has two distinct sections, connected by the stairway/entry hall.
- Structures are arranged in a "suite" style that promotes private entrance and exit of individual renters.
- There are no shared bathrooms.
- Buildings are upfitted with residential fire sprinkler systems required for congregate living uses, but not required for single-family residences.
- The nature of the overall land development pattern of these properties indicates the use as a group living.

4. Relative amount and types of sales.

Administrator's interpretation: No on-premise sales are proposed or anticipated, except in accordance with home occupation standards, which would be allowed under all residential categories.

5. Relative number of employees and customers.

Administrator's interpretation: No employees or customers are proposed or anticipated, except in accordance with home occupation standards, which would be allowed under all residential categories.

6. Hours of operation.

Administrator's interpretation: Hours of operation, or the hours that residents are active on the property, are expected to be consistent with all residential categories.

7. Number of vehicle trips generated, types of vehicles, and parking demand.

Administrator's interpretation: Expectation of one vehicle per adult resident is consistent with parking standards for General Group Living in GDC Section 19-4.6.2.C.1, requiring 1 space per rooming unit. Vehicle trips for each individual renter would reflect that of an adult driver in all residential uses.

- Each bedroom can be rented individually.
- Each structure has between 5 – 6 bedrooms with private bathrooms.
- Each bedroom will be rented by at least one paying adult.
- Generally, one vehicle is anticipated for each renting adult.
- The applicant submitted a parking permit plan, which the City denied, midway through the project to try and expand parking. This indicated to staff the applicant's intent for Group Living. The industry standard is three spaces per single family residential unit, which is all each structure currently has. There are only 8 parking spaces for 21 residents if the bedrooms are singly occupied, and not allowing for guests.

8. Anticipated amount and type of outdoor storage.

Administrator's interpretation: No outdoor storage is proposed or anticipated, consistent with all residential categories.

9. Likely impact on adjacent properties.

Administrator's interpretation: The concentration of adult residents individually renting rooms, with separate vehicles, is anticipated to cause noise and on- and off-site parking issues, most consistent with those expected from a general group living boarding house use. Since the property is zoned RH-C under the GDC and previously R-6 under the LMO, the intent of the zoning for these parcels is single-family residential houses, consistent with surrounding uses. The impact on the surrounding neighbors would be more intense than single-family residential, causing additional noise and parking concerns.

Statement of Noncompliance

Subject properties at 911, 915, 917, and 919 Rutherford Road are zoned RH-C, House C district. The use of "General group living", per Greenville Development Code Section 19-3.2.2 – USE TABLE, is not a permitted use in the RH-C zoning district. As such, the intended use by the Applicant, as determined by the Administrator to be a "General group living" use, and specifically boarding house, is not permitted on the properties at 911, 915, 917, and 919 Rutherford Road and tax parcels as identified on this letter.

Occupancy or allowance by the owner of any person to occupy such premises in a manner consistent with a "General group living" use is a violation of the Greenville Development Code and is subject to penalties under Section 19-6.4.4.

Right to Appeal

If you have cause to disagree with the Administrator's interpretation of the development code, you have the right to appeal to the Board of Zoning Appeals. The appeal must be filed with the Administrator within 30 calendar days of receipt of this letter, and must indicate the reasons you believe the Administrator's interpretation is not justified by the code, either in whole or in part. An Application for Appeal of Administrator's Decision or Interpretation is available at www.greenvillesc.gov/development/zoning or by emailing planning@greenvillesc.gov.

Right to Seek a Rezoning

You also have the right to seek a rezoning of the subject properties to a zoning district that allows for General group living. This process is outlined in the Greenville Development Code in section 19-6.2.2. Legislative Review.

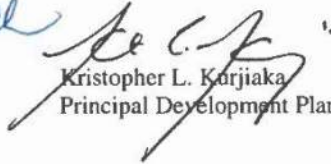
Zoning districts where boardinghouses were allowed under the former LMO were the following zoning districts by special exception: RM-2, RM-3, OD, C-2, or C-3. Under the new Greenville Development Code, General group living is allowed in the following zoning districts: RN- (Neighborhood-Scale Districts), RC- (Community-Scale Districts), MX- (Mixed Use Districts), MXS- (Shopfront Mixed Use Districts), BG (Business General), IX (Industrial Flex), or CM (Campus).

If you have any questions regarding this letter or the Administrator's interpretation provided herein, do not hesitate to contact us to discuss.

Sincerely,



Mary Douglas Hirsch
Planning Administrator



Kristopher L. Korjiaka
Principal Development Planner

Attachment B

Determination Criteria & Responses

Here is a summary of the reasons for their decision, which they mention is based almost solely on previous marketing and online communication related to the project:

1. **Reason:** Intent to rent structures by the bedroom

Applicant's Response: There is nothing in the code that limits the number of leases you can have on any given dwelling unit. With that said, my intent has been, and has been communicated to the City throughout the process, to have one single master lease per home

2. **Reason:** Sprinkler systems are present - these are not required for Household living and therefore proves intent to use as Group Living

Applicant's Response: The City threatened stop-work orders if I did not address the need for sprinklers based on their interpretation of the use. These sprinklers cost an additional \$70-80k to the project, but I obliged in order to avoid further costly delays. (See Addendum A for email correspondence related to this issue)

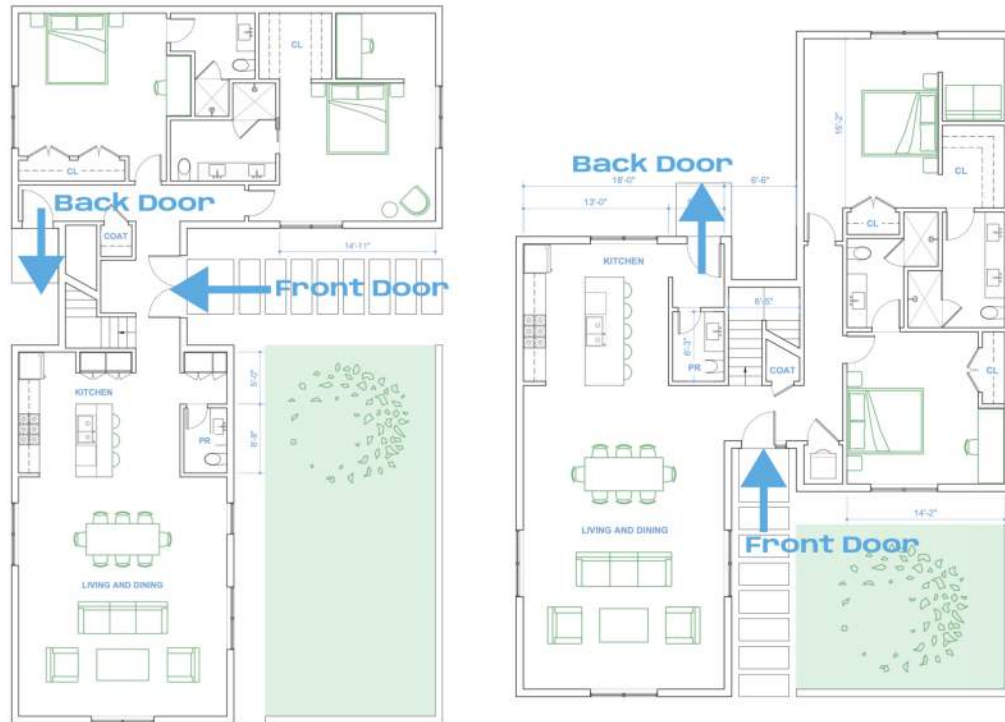
3. **Reason:** Nuisance of higher volume of cars is more consistent with Group Living

Applicant's Response: There is no limit in the code to how many cars a household may have. Indeed, many homes within the same neighborhood that fall under the category of Household Living regularly have as many or more cars than the available spaces of our project. (See images of examples below)

Any nuisance at this point is purely speculative, and will be addressed through terms in the lease agreements.

4. **Reason:** Structures are arranged in a "suite" style that promotes private entrance and exit of individual renters. More broadly, the nature of the overall land development pattern indicates use as Group Living

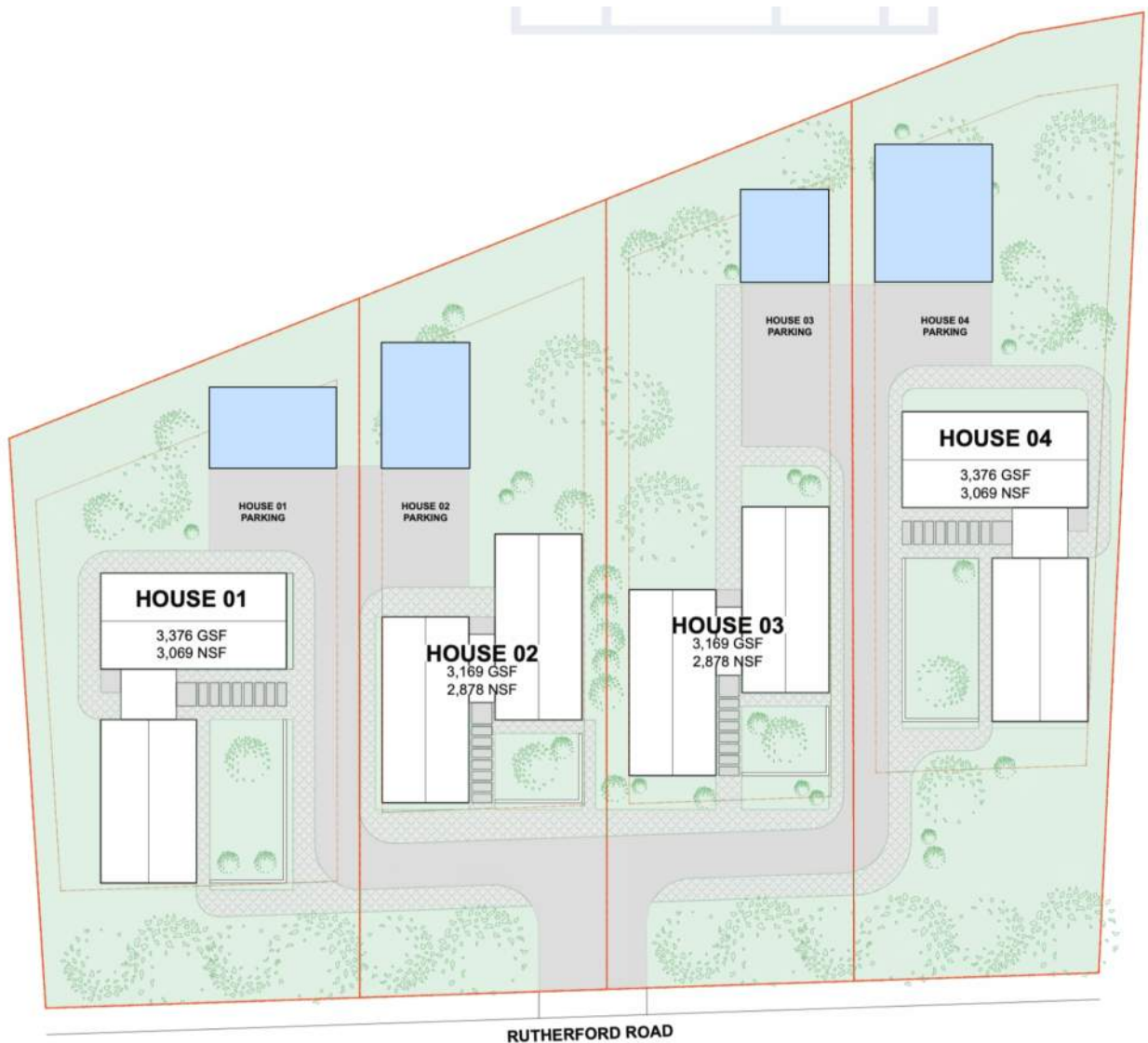
Applicant's Response: There is nothing in the code that defines any layout or land development pattern that differentiates between Household Living and Group Living. Despite this fact, these homes do not have any private entrances/exits, and the overall land development pattern has not changed since it was approved by the City for Household Living



5. **Reason:** Vehicle use and parking demand is consistent with Group Living standards. Applicant tried to expand parking midway through the project (and was denied), which indicates intent for Group Living

Applicant's Response: The code only states the minimum amount of parking required for both Household Living and Group Living. There is no maximum. Our application to formally expand parking was in response to both the City and neighbors voicing concern that we didn't have enough parking, which they worried would force people to park on the street in front of neighboring houses. Regardless, we have sufficient space for cars to park behind each home (blue areas below), and plan to offer incentives to renters to reduce the number of cars.

Use Category	Use Type	Minimum Spaces Required	Maximum Spaces Allowed
RESIDENTIAL USES			
Household Living	Single-unit living	2 per primary unit + 1 per <u>accessory</u> unit	--
	Multi-unit living	1 per dwelling unit	--
	Manufactured home park	2 per dwelling unit	--
Group Living	General group living	1 per dwelling or rooming unit	--



6. **Reason:** Anticipation of impact - noise & parking - on adjacent properties "is most consistent with those expected from a general group living boarding house use"

Applicant's Response: There is nothing in the code that defines the allowable amount of people, cars, or noise to be considered Household Living versus a Group Living Boarding House. All nuisances are pure speculation at this point, and will be dealt with through terms in lease agreements. (See below for examples of other nearby Households with 5+ cars)

Attachment C

Affidavit

Exhibit A

STATE OF SOUTH CAROLINA)
) **AFFIDAVIT OF COMPLIANCE**
COUNTY OF GREENVILLE)

The undersigned, being duly sworn, depose, and state the following:

I, Matt McPhoeely, as the owner/authorized agent of the property
(print name)
located at 911, 915, 917, and 919 Rutherford Road certify that the project approved under
building permits 21-2823, 22-307, 22-308, 22-309, and associated permits will be constructed as
detached single-family residential dwellings and used only for single-family household living in
substantial compliance with the approved plans and all associated conditions of said approvals
issued under the provisions of the Land Management Ordinance. Further, I acknowledge that the
subject properties will not be used as a boardinghouse, group living, communal living, or any
other use not permitted within the R-6, Single-family residential zoning district. I understand that
if the project is not constructed or used in substantial compliance with the plans formally
approved by City of Greenville staff, and all associated conditions of said approval, enforcement
action may be commenced by the administrator pursuant to Section 19-10, *Enforcement*, of the
Land Management Ordinance.

[Signature]
OWNER OR OWNER'S AUTHORIZED AGENT

Matt McPhoeely
PRINTED NAME

SWORN TO before me

this 22 day of August 2022.

[Signature]

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission expires: 9/1/2027



Attachment D

Legal Summons

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE)	
City of Greenville, South Carolina,	)	CASE NUMBER: 2023-CP-23-_____
)	
Plaintiff,)	
	)	SUMMONS
v.)	
)	
915 + Main, LLC, and Matthew McPheely,)	
)	
Defendants.)	

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complain in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to this Complaint upon subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

BY: s/Logan M. Wells
Logan M. Wells, Esq., S.C. Bar No. 78434
Leigh B. Paoletti, Esq., S.C. Bar No. 69114
Office of the City Attorney
Post Office Box 2207
Greenville, South Carolina 29602
Telephone: (864) 467-4420
Fax: (864) 467-4424
Email: lmwells@greenvillesc.gov
lpaoletti@greenvillesc.gov

Attorneys for Plaintiff

Greenville, South Carolina
June 19, 2023

ELECTRONICALLY FILED - 2023 Jun 19 5:07 PM - GREENVILLE - COMMON PLEAS - CASE#2023CP2303095

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE)	
	)	CASE NUMBER: 2023-CP-23-_____
City of Greenville, South Carolina,)	
)	
Plaintiff,)	
	)	COMPLAINT
v.)	
)	
915 + Main, LLC, and Matthew McPheely,)	
)	
Defendants.)	

Plaintiff City of Greenville, South Carolina, complaining of the above-named Defendants, would respectfully show unto this Honorable Court as follows:

JURISDICTION

1. Plaintiff City of Greenville, South Carolina (hereinafter, the "City"), is a political subdivision of the State of South Carolina and an incorporated South Carolina municipality.

2. Defendant 915 + Main, LLC (hereinafter, "915 Main") is a South Carolina limited liability company with its principal place of business in Greenville County, South Carolina, and the owner of those certain parcels of real property located at 911, 915, 917, and 919 Rutherford Road, within the City of Greenville in Greenville County, South Carolina (Tax Map Numbers 018302-01-00903, 018302-01-00904, 018302-01-00905, and 018302-01-00901, respectively) (collectively, hereinafter, "Property").

3. Upon information and belief, Defendant Matthew McPheely (hereinafter, "McPheely") is a resident of Greenville County, South Carolina, and the manager and sole member of 915 Main.

4. This Court has jurisdiction over the parties and subject matter of this action.

5. Venue is proper in Greenville County, South Carolina, pursuant to S.C. Code Ann. § 15-7-10.

FACTUAL BACKGROUND

6. The Property is zoned R-6, single-family residential district; pursuant to Chapter 19 of the City of Greenville's Code of Ordinances ("LMO"), group living is not permitted within an R-6 zoning classification.¹

7. Defendants are the developers of a project being constructed on the Property pursuant to building permits applied and issued for residential-new single family ("Union House").

8. Though permitted as new single family residential construction, Union House appears designed and intended for communal/group living.

9. Union House consists of four residential structures outfitted with fire sprinklers.

10. Per applicable building and fire code, fire sprinklers are not required for a single-family residential structure, but are required for certain congregate living structures.

11. One Union House structure has six bedrooms and six bathrooms, while the remaining three structures have five bedrooms and five bathrooms.

12. Each bedroom in Union House has a connected full private bathroom.

13. In spite of the Property's R-6 zoning classification, throughout the development of Union House, Defendants have solicited investors and marketed Union House as designed and intended to be used for communal/group living.

14. In the Form C Defendants filed with the United States Securities and Exchange Commission, Defendants describe their Union House business plan as follows:

¹ On June 12, 2023, the City adopted a new development code and zoning map that will go into effect on July 15, 2023. Under the new development code, the Property will be zoned RH-C; as with R-6, group living is not permitted within an RH-C zoning classification.

18. City staff, recognizing that Defendants' advertised use of Union House and the allowed use of the Property are inconsistent, required Defendants execute a zoning compliance affidavit certifying that Union House will be used only for single-family household living and acknowledging that Union House will not be used as a boardinghouse, group living, communal living, or any other use not permitted within the R-6 zoning district. *See* (Ex. A, Zoning Compliance Aff. dated August 22, 2022).

19. During the course of discussions with City staff regarding said inconsistency, McPheely stated, "I do have a campaign open to raise money for this [communal living] concept, but this will only be done if the upcoming new zoning code allows for it on this site." (Ex. B, Jun. 30, 2022 McPheely Email to Buddy Skinner).

20. Despite that representation, the adoption of the new development code, and a week's passage of time since the adoption of the new code, Defendants continue to market Union House for communal/group living.

21. Defendants' continued marketing of Union House for communal/group living, together with the design of Union House, including but not limited to, the segregation of private and communal space, the inclusion of fire sprinklers, and the multiple private sleeping units within each structure, demonstrate Defendants' intention to use the Property in violation of the City's LMO.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgement)

22. The City repeats and realleges all the allegations of the above paragraphs as if specifically repeated herein verbatim.

23. For the purpose of determining a question of actual controversy between the parties, the City seeks a declaration in accordance with S.C. Code Ann. §§ 15-53-20 and -30.

Workforce housing infill development: The property – on 1 acre – is positioned one mile from the core of Main St, on the northern edge of the North Main neighborhood on Rutherford Rd. The project consists of the development of 4 detached homes, each roughly 3000-3200 square feet.

Unique Business Model: Union House is meant to fill a gap in the affordable housing market in Greenville. We are providing high quality rental units in an accessible infill location at a workforce housing rate. *We accomplish this by renting out each suite and providing shared access to common spaces.* This is being done with adaptations of existing homes in various areas around the country; we are providing this solution with intentionality from the outset of construction to maximize the space and affordability.

Form C, dated June 10, 2022, 22-23, available at https://www.sec.gov/Archives/edgar/data/1931979/000182198222000005/FormC_UH.pdf (Emphasis added).

15. Defendant McPheely explains the Union House model as one in which “each three thousand square foot home that can be rented out by the bedroom...” for which he anticipates charging rent in the amount of \$800-\$1100 per month. Matt McPheely: The Most Creative Real Estate Investor and Developer We Know, Real Estate Unstuck Podcast (Sept. 27, 2022) (downloaded using iTunes).

16. Likewise, the Union House website describes the project as intended for co-living:

Union House is the first single-family home purposefully designed and built with teachers in mind.

Each bedroom comes with it's *[sic]* own private bathroom. The shared and private spaces are connected by a stairwell that allows people to choose between entering the public space to be with their housemates, or going straight to their suite when in need of some time to be alone.

Union House web page, “Our Story”, <https://unionhouse.city/our-story> (last visited June 19, 2023).

17. And in the tweet pinned at the top of his Twitter profile, McPheely describes Union House as “coliving houses.” Matt McPheely, @mattmcpheely, Twitter (Sept. 27, 2022, 12:02 PM), <https://twitter.com/mattmcpheely/status/1574791687263735815> (last visited Jun. 19, 2023).

24. Pursuant to S.C. Code Ann. § 15-53-30, “Any person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.”

25. The City has standing to pursue this action.

26. The use for which Defendants designed and market Union House constitutes group living under the LMO. *See City Code of Ordinances § 19-4.2.2(B)(1).*

27. Group living is prohibited within the R-6 zoning classification. *See City Code of Ordinances § 19-4.1-2.*

28. The use for which Defendants designed and market Union House constitutes group living under § 19-3.3.2.B of the new development code.

29. Group living is not permitted within the RH-C zoning classification as provided in § 3.2.2 of the new development code.

30. The City seeks a declaration that:

- a. Under the facts and circumstances of this case, the rent-by-the-room model marketed by Defendants constitutes group living use prohibited under the LMO and is prohibited on the Property under its current zoning;
- b. Under the facts and circumstances of this case, the rent-by-the-room model marketed by Defendants constitutes group living use prohibited under the new development code and is prohibited on the Property under the new zoning classification effective July 15, 2023.

FOR A SECOND CAUSE OF ACTION
(Injunction)

31. The City repeats and realleges all the allegations of the above paragraphs as if specifically repeated herein verbatim.

32. Pursuant to S.C. Code Ann. § 6-29-950, “In case a building, structure, or land is or *is proposed to be used in violation of any ordinance adopted pursuant to this chapter*, the zoning administrator or other appropriate administrative officer, municipal or county attorney, or other appropriate authority of the municipality or county or an adjacent or neighboring property owner who would be specially damaged by the violation may in addition to other remedies, *institute injunction, mandamus, or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use*, or to correct or abate the violation, or to prevent the occupancy of the building, structure or land.”

33. The Property is zoned R-6.

34. The use for which Defendants have marketed and designed Union House is classified as group living under the LMO.

35. Group living is not allowed within an R-6 zoning classification.

36. Under the new development code, the Property will be zoned RH-C.

37. The use for which Defendants have marketed and designed Union House is classified as group living under the new development code.

38. Group living is not allowed within the RH-C zoning classification.

39. Defendants have not sought applied to re-zone the property to a zoning classification under which group living would be permitted.

40. Defendants' statements and conduct, including but not limited to, the design of Union House and the continued marketing of Union House for group living, demonstrates Defendants propose to use the Property in violation of the LMO and the new development code.

41. Pursuant to S.C. Code Ann. § 6-29-950, the City is entitled to a permanent injunction preventing Defendants from using the Property for group living in violation of the LMO and/or the new development code.

WHEREFORE, the City prays that the Court enter judgement against Defendants and award the City the following relief:

1. Granting declaratory judgment requests as to the matters set forth above;
2. Enjoining Defendants from using the Property in violation of the LMO;
3. Enjoining Defendants from using the Property in violation of the new development code; and
4. Such other and further relief as it deems just and proper.

Respectfully submitted,

BY: s/Logan M. Wells
Logan M. Wells, Esq., S.C. Bar No. 78434
Leigh B. Paoletti, Esq., S.C. Bar No. 69114
Office of the City Attorney
Post Office Box 2207
Greenville, South Carolina 29602
Telephone: (864) 467-4420
Fax: (864) 467-4424
Email: lmwells@greenvillesc.gov
lpaoletti@greenvillesc.gov

Attorneys for Plaintiff

Greenville, South Carolina
June 19, 2023

Attachment E

Answer & Counterclaim

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
CITY OF GREENVILLE, SOUTH	)	C.A. No.: 2023-CP-23-03095
CAROLINA,)	
)	
Plaintiff / Counterclaim-Defendant,)	
)	
vs.	)	<u>ANSWER & COUNTERCLAIM</u>
)	
915 + MAIN, LLC and MATTHEW)	
McPHEELY,)	
)	
Defendants / Counterclaim-Plaintiffs.)	

COME NOW 915 + Main, LLC and Matthew McPheely, Defendants, by and through their undersigned counsel, and responding to the allegations of the Complaint, and further, by way of Counterclaim, respectfully submit the following responses and defenses thereto:

FOR A FIRST DEFENSE TO THE COMPLAINT
(General Denial)

1. Unless expressly admitted, qualified, or otherwise explained, each and every allegation of the Complaint is denied.

FOR A SECOND DEFENSE TO THE COMPLAINT
(Responses to Specific Allegations)

2. Paragraph 1 of the Complaint is admitted.

3. Paragraph 2 of the Complaint is admitted.

4. Paragraph 3 of the Complaint is admitted.

5. Paragraph 4 of the Complaint is an assertion of the propriety of jurisdiction, to which no response is required, and to which no response shall be deemed as having been given. To the extent that the allegations of this Paragraph may require some other or further response, the

same are denied. Although Defendants do not presently contest the propriety of jurisdiction, each Defendant reserves the right to do so as litigation may proceed.

6. Paragraph 5 of the Complaint is an assertion of the propriety of venue, to which no response is required, and to which no response shall be deemed as having been given. To the extent that the allegations of this Paragraph may require some other or further response, the same are denied. Although Defendants do not presently contest the propriety of venue, each Defendant reserves the right to do so as litigation may proceed.

7. Paragraph 6 of the Complaint is denied.

8. Paragraph 7 of the Complaint is denied.

9. Responding to Paragraph 8 of the Complaint, it is admitted only that Defendant 915 + Main, LLC (“**the Company**”) received appropriate construction permits from Plaintiff under Plaintiff’s designation of “single family residential construction,” which was issued under a development code that is no longer applicable, and that Company intends to utilize the properties for which the construction permits were issued for any purpose permissible under the currently governing Development Code. To the extent that the allegations of this Paragraph may require some other or further response, they are denied.

10. Paragraph 9 of the Complaint is admitted.

11. Responding to Paragraph 10 of the Complaint, Defendants are without knowledge and information sufficient to form a belief as to the truth of the allegations set out therein, and so deny the same.

12. Paragraph 11 of the Complaint is denied.

13. Paragraph 12 of the Complaint is admitted.

14. Responding to Paragraph 13 of the Complaint, it is admitted only that the “Union House” development has been promoted as an opportunity for people who wish to reside with roommates in a single-family home in Greenville, South Carolina to do so, and that crowd-sourced investment opportunities have been made available. To the extent that the allegations of this Paragraph may require some other or further response, the same are denied.

15. Paragraph 14 of the Complaint is admitted.

16. Responding to Paragraph 15 of the Complaint, Defendants admit only so much of this allegation as is stated, verbatim, in the podcast referenced. To the extent that this Paragraph contains any other or further allegations to which a response is required, the same are denied.

17. Responding to Paragraph 16 of the Complaint, Defendants admit only so much of this allegation as is stated, verbatim, in the webpage referenced. To the extent that this Paragraph contains any other or further allegations to which a response is required, the same are denied.

18. Responding to Paragraph 17 of the Complaint, Defendants admit only so much of this allegation as is stated, verbatim, in the Tweet referenced. To the extent that this Paragraph contains any other or further allegations to which a response is required, the same are denied.

19. Responding to Paragraph 18 of the Complaint, it is admitted that an “Affidavit of Compliance” was executed by Defendant McPheely on August 22, 2022, and admit the characterization of the contents of the affidavit only insofar as the characterizations state—truly, accurately, and verbatim—the contents of such affidavit. To the extent that this Paragraph contains any other or further allegations to which a response is required, the same are denied.

20. Paragraph 19 of the Complaint is admitted only to the extent that Plaintiff has truly, accurately, and verbatim quoted the contents of the email referenced therein. To the extent that

this Paragraph contains any other or further allegations to which a response is required, the same are denied.

21. Paragraph 20 of the Complaint is denied.

22. Paragraph 21 of the Complaint is denied.

FOR A THIRD DEFENSE TO THE FIRST CAUSE OF ACTION
(Declaratory Judgment)

23. Defendants incorporate each of their foregoing responses and defenses into this specific defense, to the extent such foregoing responses and defenses are not inconsistent with the responses of this specific defense.

24. Responding to Paragraph 23 of the Complaint, it is admitted that South Carolina Code § 15-53-10 et seq. is the Uniform Declaratory Judgments Act, and that Plaintiff apparently intends to proceed under its provisions. To the extent that the allegations of this Paragraph may require some other or further response, Defendants are without knowledge or information sufficient to form a belief as to their truth, and so deny the same.

25. Responding to Paragraph 24 of the Complaint, it is admitted that Plaintiff has correctly quoted South Carolina Code § 15-53-30. To the extent that the allegations of this Paragraph may require some other or further response, the same are denied.

26. Paragraph 25 of the Complaint is stated in the form of a legal assertion, to which no response is required, and to which no response shall be deemed as having been given. To the extent that the allegations of this Paragraph may require some other or further response, the same are denied.

27. Paragraph 26 of the Complaint is denied.

28. Responding to Paragraph 27 of the Complaint, it is admitted that the prior version of Plaintiff's zoning ordinance—which has been replaced and is no longer governing or relevant—

prohibits “group living” within zone R-6. It is further admitted that this provision has no continuing relevance to the matter sued upon. To the extent that the allegations of this Paragraph may require some other or further response, the same are denied.

29. Paragraph 28 of the Complaint is denied.

30. Paragraph 29 of the Complaint is admitted.

31. Responding to Paragraph 30 of the Complaint, it is denied that Plaintiff is entitled to any of the relief requested.

FOR A THIRD DEFENSE TO THE SECOND CAUSE OF ACTION
(Injunction)

32. Defendants incorporate each of their foregoing responses and defenses into this specific defense, to the extent such foregoing responses and defenses are not inconsistent with the responses of this specific defense.

33. Responding to Paragraph 32 of the Complaint, it is admitted that Plaintiff appears to have correctly quoted a portion of South Carolina Code § 6-29-950(A). To the extent that the allegations of this Paragraph may require some other or further response, the same are denied.

34. Paragraph 33 of the Complaint is denied.

35. Paragraph 34 of the Complaint is denied.

36. Responding to Paragraph 35 of the Complaint, it is admitted that the prior version of Plaintiff’s zoning ordinance—which has been replaced and is no longer governing or relevant—prohibits “group living” within zone R-6. It is further admitted that this provision has no continuing relevance to the matter sued upon. To the extent that the allegations of this Paragraph may require some other or further response, the same are denied.

37. Responding to Paragraph 36 of the Complaint, it is admitted that the property-in-suit is presently zoned as classification RH-C.

- 38. Paragraph 37 of the Complaint is denied.
- 39. Paragraph 38 of the Complaint is admitted.
- 40. Paragraph 39 of the Complaint is admitted.
- 41. Paragraph 40 of the Complaint is denied.
- 42. Paragraph 41 of the Complaint is denied.

FOR A THIRD DEFENSE TO THE PRAYER FOR RELIEF

43. Defendants incorporate each of their foregoing responses and defenses into this specific defense, to the extent such foregoing responses and defenses are not inconsistent with the responses of this specific defense.

44. Responding to the final substantive Paragraph of the Complaint, which constitutes a prayer for relief, and which is comprised of four (4) subparts, Defendants deny that Plaintiff is entitled to any of the relief sought.

FOR A FOURTH DEFENSE TO THE COMPLAINT
(Reassertion of General Denial)

45. Defendants incorporate each of their foregoing responses and defenses into this specific defense, to the extent such foregoing responses and defenses are not inconsistent with the responses of this specific defense.

46. By way of reassertion, unless expressly admitted, qualified, or otherwise explained, each and every allegation of the Complaint is denied.

FOR A FIFTH DEFENSE TO THE COMPLAINT
(Failure to State Facts Sufficient to Constitute a Cause of Action)

47. Defendants incorporate each of their foregoing responses and defenses into this specific defense, to the extent such foregoing responses and defenses are not inconsistent with the responses of this specific defense.

48. With respect to one or more causes of action and one or both Defendants, Plaintiff has failed to state facts sufficient to constitute a cause of action. Accordingly, pursuant to Rule 12(b)(6), SCRPC, the fatally defective causes of action must be dismissed as a matter of law.

**FOR A SIXTH DEFENSE TO THE COMPLAINT AND
BY WAY OF FIRST COUNTERCLAIM
(Declaratory Judgment)**

49. Defendants incorporate each of their foregoing responses and defenses into this specific defense, to the extent such foregoing responses and defenses are not inconsistent with the responses of this specific defense.

50. Company is the owner of the parcels located at 911, 915, 917 & 919 Rutherford Road, Greenville, SC 29609 (“**the Properties**”).

51. Each of the Properties is located within the territorial jurisdiction of the City of Greenville, South Carolina, and is presently zoned under classification RH-C.

52. On each of the Properties is a single detached dwelling, completely separated on all sides from any other structure.

53. Plaintiff’s current zoning ordinance went into effect on July 15, 2023.

54. Plaintiff’s references in the Complaint to zoning classification R-6 pertain to a zoning classification that existed under the version of Plaintiff’s zoning ordinance that existed immediately prior to July 15, 2023.

55. Under Plaintiff’s current zoning ordinance, there is no zoning classification “R-6.”

56. With respect to zoning classification “RH-C” as utilized by Plaintiff’s current zoning ordinance, “RH-C” belongs to a broader class of zoning category established at Greenville City Ordinance § 19-2.2.1. This Section describes the purpose of “RH-” classifications, which includes class “RH-C,” as follows:

A walkable neighborhood environment intended to accommodate a variety of low-intensity housing options including single-family homes and accessory units, supporting and within walking distance of neighborhood-serving retail, food and service uses.

57. Consistent with Greenville City Ordinance § 19-2.2.1, one (1) primary unit may be built on a property zoned “RH-C,” provided that the property is at least forty (40) feet wide, and provided the unit is no more than forty (40) feet wide, nor more than thirty-two (32) feet (or 2.5 stories) tall.

58. Each of the Properties is at least forty (40) feet wide.

59. Each of the units on each of the Properties is, as constructed, less than forty (40) feet wide.

60. Each of the units on each of the Properties is, as constructed, less than thirty-two (32) feet (or 2.5 stories) tall.

61. Under Plaintiff’s current zoning ordinance, and specifically, at Greenville City Ordinance § 19-3.3.2, there are two types of permissible “residential uses” established: “Household Living” and “Group Living.”

62. “Household” is defined by the current zoning ordinance as “[o]ne or more persons living together in a dwelling unit, with common access to, and common use of all living, kitchen, and eating areas within the dwelling unit.” Greenville City Ord. § 19-7.2.

63. “Dwelling unit” is defined as “[a] building, or a portion of a building, designed for occupancy of one household for residential purposes and having living, cooking, sleeping and sanitation facilities.” Id.

64. Nowhere in the current zoning ordinance is there a requirement that a “household” is limited to individuals related by blood, marriage, or romantic or familial relationship.

65. Under the current zoning ordinance, a “household” may be established by one or more adults living in the same dwelling unit who share no romantic or familial relationship.

66. Under the current zoning ordinance, there is no requirement that a “household” may be established only if all persons living together in a dwelling unit have common access to all sleeping facilities.

67. Under the current zoning ordinance, there is no requirement that a “household” may be established only if all persons living together in a dwelling unit have common access to all sanitation facilities.

68. Under the current zoning ordinance, there is no requirement that a “household” can be established only if all persons living together in a dwelling unit have common access to all parts of the premises.

69. Under the current zoning ordinance, there is a difference between “Household Living” and “Group Living.” Greenville City Ord. § 19-3.3.2.

70. “Group Living” is defined as the “[r]esidential occupancy of a building by a group of people that does not meet the definition of household living.” Id. § 19-3.3.2(B).

71. Under the current zoning ordinance, if the use of a property qualifies as “household living,” by definition, it is not “group living.”

72. Under the current zoning ordinance, “household living” is established by “one or more persons living together in a dwelling unit, with common access to, and common use of, all living, kitchen, and eating areas within the dwelling unit.” Id. § 19-3.3.2(A).

73. Under the current zoning ordinance, one of the permissible types of “household living” is “Single-Unit Living.” Id.

74. The current zoning ordinance defines “Single-Unit Living” as “[o]ne primary dwelling unit on a lot.” Id.

75. Under the current zoning ordinance, “single-unit living” is a permissible use in zoning class RH-C. Id. § 19-3.2.2.

76. By contrast, under the current zoning ordinance, “group living” is characterized by a dwelling until that has “a common eating area for residents and residents may receive care, training or treatment.”

77. Defendants have previously expressed to Plaintiff’s representatives their desire to utilize the dwelling units of each of the Properties to house one or more people.

78. Plaintiff understands that, if Company is allowed to house one or more people in each of its dwelling units, each of the residents of a dwelling until will have common access to, and common use of, all living, kitchen, and eating areas within the dwelling unit.

79. Plaintiff has no knowledge or information to suggest that Company intends to offer or provide care, training, or treatment to any person(s) who may reside in any of the dwelling units on any of the Properties.

80. If one or more persons were to live in a dwelling unit on any of the Premises, the use would be “household living.”

81. If one or more persons were to live in a dwelling unit on any of the Premises, the use would be “single-unit living.”

82. If one or more persons were to live in a dwelling unit on any of the Premises, the use would be consistent with zoning class “RH-C” under the current zoning ordinance.

83. If one or more persons were to live in a dwelling unit on any of the Premises, the use would not be “Group Living” under the current zoning ordinance.

84. Despite the fact that the Complaint characterizes Company's business model as "rent-by-the-room," no such term is utilized by the current zoning ordinance.

85. Despite the fact that the Complaint describes Company as wishing to engage in the business of providing "communal living," no such term is utilized by the current zoning ordinance.

86. A real, substantial, and justiciable controversy exists with regard to the determination as to whether Company may utilize each of the Properties for purposes of housing one or more people, who will have common access to all living, kitchen, and eating areas of their dwelling unit, in a manner consistent with Plaintiff's currently applicable zoning ordinance.

87. Company therefore respectfully requests a declaratory judgment as to this issue.

**FOR A SEVENTH DEFENSE TO THE COMPLAINT AND
BY WAY OF SECOND COUNTERCLAIM
(Recovery of Attorneys' Fees)**

88. Defendants incorporate each of their foregoing responses and defenses into this specific defense, to the extent such foregoing responses and defenses are not inconsistent with the responses of this specific defense.

89. South Carolina Code § 15-77-300(A) allows a party who is contesting action taken by the State or a political subdivision thereof to recover reasonable attorneys' fees in the event that the party contesting such action prevails in the suit.

90. Accordingly, in the event that Defendants prevail in this matter, then, in addition to any other relief that may be awarded, Defendants respectfully request an award of reimbursement of attorneys' fees and costs under South Carolina Code § 15-77-300(A).

FOR AN EIGHTH DEFENSE TO THE COMPLAINT
(Reservation of Rights)

91. Defendants incorporate each of their foregoing responses and defenses into this specific defense, to the extent such foregoing responses and defenses are not inconsistent with the responses of this specific defense.

92. Defendants hereby expressly reserve the right to alter, amend, modify, and/or supplement this pleading as litigation may continue, specifically to assert new claims and/or defenses, and all in conformity with the applicable Rules of Civil Procedure.

REQUEST FOR RELIEF

WHEREFORE, Defendants respectfully request an order and judgment that:

- A. Dismisses the Complaint in its entirety;
- B. Grants the Relief sought in the Counterclaim in its entirety; and,
- C. Provides such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/ Steven Edward Buckingham

Steven Edward Buckingham (S.C. Bar No. 0075089)
The Law Office of Steven Edward Buckingham, LLC
16 Wellington Avenue
Greenville, South Carolina 29609
(o) 864.735.0832
(e) seb@buckingham.legal

Attorney for Defendants

July 28, 2023
Greenville, South Carolina

Attachment F

Definitions

- **“Household”** is defined by the current zoning ordinance as “[o]ne or more persons living together in a dwelling unit, with common access to, and common use of all living, kitchen, and eating areas within the dwelling unit.” *Greenville City Ord. § 19-7.2*
- **Single-Unit Living:** “One primary dwelling unit on a lot.” § 19-3.3.2(A)
- **Dwelling Unit:** “A building, or a portion of a building, designed for occupancy of one household for residential purposes and having living, cooking, sleeping and sanitation facilities. § 19-7.2
- **“Group Living”** is defined as the “[r]esidential occupancy of a building by a group of people that does not meet the definition of household living. Tenancy is typically arranged for 30-days or more. Generally, group living facilities have a common eating area for residents and residents may receive care, training or treatment.” § 19-3.3.2(B)

Of note, the GDC does not include a definition of a boarding house but instead lists boarding houses as one example of Group Living. The City has acknowledged they are relying on the previous definition in the LMO, which is no longer in effect. Here is the only mention of “boarding house” in the GDC:

- **“General Group Living:** Group living uses that provide for a variety of living facilities. Typical examples include boarding house, dormitory, fraternity or sorority house, monastery or convent, single-room-occupancy (SRO) housing, cooperative housing, assisted living facility, community residential care facility, group foster homes, hospice, nursing homes, rehabilitation center, and alternative/post incarceration facility.” § 19-3.3.2(B.1)

Attachment G

Nearby Household Living Examples

The following are examples of Single Unit Living Households within 1 mile of this property:



5 cars parked directly behind a 2600-ft² home on a 0.23-acre lot



5 cars parked on a 0.24-acre lot



4 cars parked on the street for a rental home rented by 4 teachers living together as roommates

FURNISHED FINDER SEARCH OUR MAP SEARCH HOTELS HOUSING REQUEST PROPERTY OWNERS RESOURCES LIST YOUR PROPERTY Login

30 of 43 results with availability around 9/17/2023 No booking fees or markups for travelers! Submit Housing Request

<p>Available on September 15</p> <p>\$1,250/month Room</p> <p>Yellow Door #3</p> <ul style="list-style-type: none"> Fully Furnished Utilities Included Room in a House 	<p>Available on September 18</p> <p>\$900/month Room</p> <p>Cozy Room On August...</p> <ul style="list-style-type: none"> Fully Furnished Utilities Included Room in a House 	<p>Available on September 12</p> <p>\$1,100/month Room</p> <p>Comfy And Quiet 1 B...</p> <ul style="list-style-type: none"> Fully Furnished Utilities Included Room in a House 	
<p>Available on September 15</p> <p>www.furnishedfinder.com/property/433632_1</p>	<p>Available on September 11</p>	<p>Available on September 17</p>	

There are hundreds of homes marketed for rent by the room in Greenville, each with a minimum 30-day rental. Here are 43 furnished rooms currently available from one site alone.